IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl.Misc.No.55207-M of 2004

Date of Decision : February 09, 2007.

Faqir Singh ..... Petitioner

Vs.

State of Punjab & another ..... Respondents

Case No. : Crl.Revn.No.1578 of 2005

Date of Decision : February 09, 2007.

Faqir Singh ..... Petitioner

Vs.

State of Punjab ..... Respondent

Coram : Hon'ble Mr.Justice Mahesh Grover

* * *

Present : Mr.T.N.Gupta, Advocate
for the petitioner.

Mr.Ramandeep Sandhu, DAG, Punjab.

Mr.B.S.Bhalla, Advocate
for respondent no.2 (in Crl.Misc.No.55207-M of 2004).

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MAHESH GROVER, J. (Oral) :

Crl.Misc.No.55207-M of 2004 :

This is a petition under Section 482 of the Cr.P.C. praying for quashing of the order dated 7.6.2003 passed by the Special Judge, Moga taking cognizance of offences under Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988, framing the charge against the petitioner on the

same day, pursuant to registration of FIR No.62 dated 29.9.1992 with Police Station City Moga.

The aforesaid order and the consequent proceedings have been assailed by the petitioner primarily on the ground that it has violated his right to speedy trial. Briefly stated, the facts of the case are that the petitioner was working as Tehsildar-cum-Sub Registrar at Moga in the year 1992. On September 29 of the same year, FIR No.62 was registered against him at Police Station City Moga under the provisions of Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988 on the statement of one Mohinder Singh (arrayed as respondent no.2 herein). The petitioner was alleged to have received a sum of Rs.500/-. The D.S.P.(Vigilance) – Shri Tara Chand raided the office of the petitioner and arrested him. However, the petitioner was released on bail on 30.09.1992.

The Additional Deputy Commissioner, Faridkot held an inquiry into the matter and found the petitioner innocent and submitted a report dated 18.6.1993 to that effect. The petitioner was reinstated pursuant to this inquiry.

Considering the report of the inquiry, the Government advised the Vigilance Department to review the matter with reference to the prosecution of the petitioner. Vide Annexure P-1, it was opined by Additional Secretary to Government Punjab, Revenue Department as follows :-

> *"In this case, an enquiry was also conducted in the matter by the Additional Deputy Commissioner, Faridkot. The matter has been considered at the level of Chief Minister, Punjab. Chief Minister has desired that the matter with reference to the prosecution of the officer may be reviewed in the light of the enquiry report, a copy*

of which is sent herewith."

The Government thereafter refused to accord sanction for the prosecution of the petitioner and categorically recorded that no case of corruption was made out. The sanction was refused on 7.2.1995 with the observations as follows :-

> *"After scrutinizing this report (copy attached) at the level of Government, it has been found that no case of corruption is made out against Faqir Singh, Ex-Sub Registrar, Moga. In view of this report, no sanction to prosecute Faqir Singh in the case cited as subject can be granted. The record received is being returned in original."*

Thereafter the petitioner retired from service on 2.5.2001. Two years after his retirement, i.e. On 29.5.2003, a challan was presented under Section 173 of the Cr.P.C. before the Special Judge, Moga. Charge was framed against the petitioner on 7.6.2003. More than three years thereafter have passed but no substantial evidence was recorded except one formal witness and the cross examination of the complainant. The petitioner has also placed on record Annexure P-4 which is copy of the trial court's order sheets during the course of hearing before it..

It has been contended by the learned counsel for the petitioner that the Government had refused to accord sanction to prosecute him on 7.2.1995 and the present proceedings are clearly an abuse of the process of law. Besides, the offence was committed in the year 1992 and the proceedings have been initiated 11 years thereafter. The Investigating Officer (IO) has since died which has severely prejudiced his case as he has been deprived of the liberty to cross-examine him. Further, his right to speedy trial as enshrined under Article 21 of the Constitution of India has also been violated. He has been prosecuted for no fault of his and even

three years after taking cognizance of offence, the evidence had not been concluded.

The aforesaid factual aspect of the matter has not been controverted by the learned counsel for the State. It was however contended by him that the sanction to prosecute had been declined by the Revenue Department and not by the Department of Vigilance. The proceedings were sought to be justified on this score.

I have heard learned counsel for the parties at length and have perused the record.

Concededly, an inquiry was got conducted by the Additional Deputy Commissioner, almost immediately after the alleged occurrence. The petitioner was categorically exonerated in the said inquiry. The matter was examined thereafter by the Government and again a specific finding was recorded that no case of corruption was made out against the petitioner and sanction to prosecute the petitioner was declined.

The contention of the learned counsel for the State that it was the Revenue Department who had declined the sanction and the Vigilance Department had not acceded to the same is not tenable in view of the fact that the Department of Vigilance did not take any action subsequent to the order Annexure P-2 having been passed. Besides, the Government is always construed to be a single entity despite the fact that it may be having various departments which may be on account of the various administrative compulsions. The contention of the learned counsel for the State, therefore, deserves to be rejected outright.

Reverting back to the facts of the case, it is clear that the challan was prepared on 18.12.1992 as is reflected from Annexure P-3 and the reason why it was not presented was that the sanction to prosecute the petitioner was awaited. The same having been declined in February 1995, the Government chose to sleep over the matter and the slumber was broken

two years after the petitioner had retired. No explanation of the same had come on record as to why the challan has been presented after a lapse of about 11 years. If it could not be presented in the year 1992, for want of sanction to prosecute the petitioner, then there was absolutely no occasion to file the same in the year 2003, after the sanction to prosecute had been declined in the year 1995. The Hon'ble Supreme Court in a case reported as ***2002 (1) SCC 149*** has observed as follows :-

> *"It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. This Court in* ***Abdul Rehman Antulay*** *v.* ***R.S.Nayak*** *while interpreting the scope of Article 21 of the Constitution held that every citizen has a right to speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and retrial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc.*

Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice."

To the same effect are the observations of Hon'ble Supreme Court in a case reported as ***2002 (1) Supreme Court Cases 153.***

The petitioner cannot be made to undergo the rigors of trial after such a protracted and unexplained delay caused by the prosecution. The observations of the Hon'ble Apex Court, as referred to above, are clearly attracted to the facts of the present case.

Consequently the present petition is allowed. The FIR and all the proceedings taken subsequent thereto are hereby quashed.

Crl.Revn.No.1578 of 2005 :

In view of the above petition being allowed, the present Criminal Revision has been rendered infructuous.

Disposed of as such.

February 09, 2007 **(MAHESH GROVER)**
monika **JUDGE**